

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 840 of 1999

with

CIVIL REVISION APPLICATION No 841 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

I B MODEL FARM PUBLIC TRUST

Versus

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS (ISKON)

Appearance:

MR SURESH N. SHELAT, SENIOR ADVOCATE with MR M.G.
NAGARKAR for Petitioners in both the revision
applications.

MR S.B VAKIL, SENIOR ADVOCATE with MRS SUDHA R
GANGWAR & MR B.R PANDYA for Respondents in both the
revision applications.

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 05/08/1999

ORAL JUDGEMENT

Common Oral judgment:

1. This judgment shall govern the disposal of the above mentioned two Civil Revision Applications arising from the judgment and order dated 3.4.1999, recorded in Misc. Civil Appeal Nos.139 of 1998 and 140 of 1998, by the learned 3rd Extra Assistant Judge, Ahmedabad (Rural), at Mirzapur, whereby he allowed both the appeals and thereby granted injunction as prayed for, in favour of the opponents herein and set aside the order of injunction recorded by the trial Court in favour of the revision petitioners herein.

2. For the sake of convenience and brevity, the revision petitioners herein will hereinafter be called as 'IB Model Farm Public Trust' whereas the opponents herein will be called as 'Iskcon'.

3. Since the dispute between both the parties in both the aforesaid revisions is with respect to 100 Acres of land situated in the sim of village Kathwad, Taluka Daskroi, District and Sub-District Ahmedabad, belonging to IB Model Farm Public Trust, at the request of the learned advocates for the parties, both the matters are taken up for final hearing and both the revision applications are heard and decided by this common judgment.

4. Before highlighting the nature of controversy posed for determination in these two revision applications, a few, but relevant, facts of the agreements entered into between the parties and consequent disputes arising thereunder need narration.

4.1. The Articles of Agreement was made at Bombay on 7th day of December 1979 between the Trustees of the Public Charitable Trust declared on the 1st day of July 1978 and called IB Model Farm Public Trust for Agricultural Sciences, on one part and (1) Shri Gopalkrishna Das, (2) Shri Jashomatinandan Das and (3) Shri Giriraj Swami, being members of the governing council of International Society of Krishna Consciousness, popularly known as 'Iskcon' of the other part, for the purpose of laudable objects of IB Model Farm Public Trust for carrying research and reforms in agricultural in livestock breeding, in dairy farming in the process of agricultural product, canning of fruits and making possible research to the Government and/or Industry for the benefit of the people. The Trustees of IB Model Farm Public Trust Public Trust have granted management of their 100 acres of agricultural land in

favour of Iskcon for a period of nine years on the terms and conditions mutually agreed between the parties. The two Trustees of Iskcon i.e., Jashomatinandan Das and Gopalkrishna Das were also inducted as Trustees of the IB Model Farm Public Trust. On afflux of time of nine years, the period of contract was renewed for a further period of ten years, that is, upto 7.12.1998 on the basis of one letter dated 6.11.1998 written by Jashomatinandan Das and Gopalkrishna Das who are the trustees of the Iskcon and IB Model Farm Public Trusts.

4.2. The dispute between the parties centres round the further renewal of the agreement, because according to IB Model Farm Public Trust, Jashomatinandan Das and Gopalkrishna Das, who happened to be the Trustees in both the Trusts, had no right to extend the period of contract by renewing the same.

4.3. Since the dispute has arisen between the parties, the original owner IB Model Farm Public Trust has filed Regular Civil Suit No. 657 of 1998 in the Court of Civil Judge (SD), Ahmedabad for the relief of permanent injunction restraining the defendant Iskcon from causing obstruction or hurdle in possession and occupation of IB Model Farm Public Trust over the suit land and further the defendant Iskcon may be restrained from entering into the suit land.

4.4. Along with the suit, application Ex.5 was also filed, wherein, temporary injunction restraining Iskcon from causing obstruction or causing hurdle in possession of the IB Model Farm Public Trust as well as restraining them from entering into the suit land was sought for.

4.5. The suit as well as application Ex.5 was contested by Iskcon by filing written statement.

4.6. The learned trial Judge, after hearing the parties, allowed the application Ex.5 by granting temporary relief as prayed for by issuing injunction against Iskcon.

4.7. On the other hand, Iskcon has also filed Regular Civil Suit No. 672 of 1998 against IB Model Farm Public Trust wherein permanent injunction restraining the defendant IB Model Farm Public Trust and its Trustees from causing any obstruction or hurdles in the occupation and possession of the suit property possessed by Iskcon was sought for.

4.8. Along with the suit, application Ex.5 was also

filed wherein temporary injunction against IB Model Farm Public Trust restraining them from causing any obstruction or hurdle in the occupation and possession of the suit property possessed by Iskcon was sought for.

4.9. The aforesaid suit and application was contested by IB Model Farm Public Trust by filing written statement.

4.10. The learned trial Judge, after hearing the parties, rejected the application and disallowed the order of status quo recorded earlier by vacating it.

4.11. The aforesaid two orders recorded below applications Ex.5 in both the suits were brought in challenge by Iskcon in the lower appellate Court i.e., District Court, Ahmedabad (Rural) by filing two separate appeals, being Misc. Civil Appeal Nos. 139 of 1998 and 140 of 1998.

4.12. The learned Extra Assistant Judge, Ahmedabad (Rural), who has heard the appeals came to the conclusion that since document 3/2 clearly suggests that Iskcon came in possession of the suit land by virtue of an agreement and once it is established that time is already expired which was fixed by an agreement, even then, the possession cannot be forcibly taken without adopting to recourse to law. So number of question is required to be determined such as whether this is a lease or IB Trust wanted to donate the suit land and without leading the evidence Court cannot determine all the aspects and therefore it was held that there is prima facie case in favour of Iskcon since the possession of the suit land is with Iskcon and, therefore, naturally balance of convenience also tilted in its favour and hence irreparable loss would also be caused to it if injunction is not granted in its favour. The learned lower appellate Judge has, therefore, granted injunction in favour of Iskcon by allowing both the Civil Misc. Appeals by order dated 3.4.1999.

4.13. Aggrieved thereby IB Model Farm Public Trust has filed the aforesaid two revision applications by challenging the legality, validity and propriety of the orders on the ground that the learned lower appellate Judge has committed jurisdictional error as envisaged under the provisions of section 115 of the Civil Procedure Code ('the Code' for short) and prayed that the order recorded by the learned lower appellate Judge which is impugned in these two revision applications at the instance of IB Model Farm Public Trust, may be quashed

and set aside by granting injunction in favour of IB Model Farm Public Trust which was rightly granted by the lower Court.

5. Learned Senior Counsel Mr. S.N. Shelat, on behalf of the revision petitioners, assailed the order on the following premise:

- (i) The agreement entered into between the parties is an agreement for management of the property of IB Model Farm Public Trust and, therefore, on the basis of this agreement Iskcon is not entitled to injunction against the owner of the property?
- (ii) Appellate Court has not examined the nature of agreement.
- (iii) Section 109 of the Transfer of Property Act cannot be invoked when Iskcon is the manager of the suit property.
- (iv) Once the agreement for management ceases to exist by afflux of time, Iskcon cannot manage the property.
- (v) The degree of control under the agreement is minimal and, therefore, relationship between the parties is merely that of a principal and agent.
- (vi) There is no provision in the agreement preventing the owner from entering into the suit land.

6. On the aforesaid premise, learned Senior Counsel Mr. Shelat contended that the learned lower appellate Judge has overlooked all the above aspects and committed serious error both of law and facts and misdirected himself about the crucial question of relationship between both the parties by holding that it is a case of lease or licence or a case of donation and, therefore, the finding recorded by the learned appellate Judge is within the sweep of jurisdictional error and hence this Court can interfere with the said order under Section 115 of the Code by allowing these revision and granting the injunction as prayed for in favour of IB Model Farm Public Trust during the pendency of the suit.

7. Learned counsel Mr. S.B. Vakil for Iskcon has made following submissions:

- (i) There is no jurisdictional error committed by the learned lower appellate Judge. Therefore, this

Court has no power to interfere under Section 115 of the Code.

(ii) So far as the nature of agreement is concerned, according to him, it is a lease or licence agreement and not an agreement simpliciter for management of the property.

(iii) By virtue of the said agreement, exclusive possession of the suit land was handed over to Iskcon. There is no clause in the agreement as to whether during the period of agreement IB Model Farm Public Trust has a right to have access on the suit land.

(iv) Iskcon is not a manager because normally 'manager' is an employee. Here Iskcon is a separate Trust and not being an employee, IB Model Farm Public Trust cannot call it a manager and, therefore, the word 'manager' is a misnomer. On a true and correct interpretation of the clauses mentioned in the agreement not only exclusive possession was handed over to Iskcon but by virtue of clauses 5 and 8 Iskcon was permitted to establish and maintain and develop gaushala and to construct any building, structures, wells, tube wells, etc.

(v) Reliefs which were not prayed before the lower court cannot be made before this Court by virtue of amendment of prayer clause 13 (bb).

8. On the aforesaid premise, Mr. Vakil contended that these revision petitions are outside the scope of Section 115 of the Code since none of the clauses mentioned in Section 115 of the Code can be invoked much less by virtue of the proviso (b) to the said section, it is outside the scope of the High Court to interfere with the impugned order and, therefore, he prayed that both the revision petitions may be rejected.

9. Upon having examined facts and circumstances emerging from the record of the case dispassionately, the following aspects are unassailable:

(a) Both the Trusts are registered Public Trusts.

(b) Articles of Agreement was entered into between both the Trusts with respect to the land belonging to IB Model Farm Public Trust for the purpose of research and reform in agricultural

activities, etc., which was to be performed by Iskcon and for this purpose Iskcon was entrusted with the possession of the said land belonging to IB Model Farm Public Trust for a period of nine years by virtue of the said agreement.

(c) As per the said agreement, Iskcon has to pay all the taxes, it is free to employ its people to administer the land and income derived from the said land will be that of Iskcon only. Moreover, Iskcon was permitted to establish and maintain and develop gaushala and allowed to construct any building, structure, etc.

(d) Gopalkrishna Das Goswami and Jashomatinandan Das are the trustees of both the Trusts.

(e) The contract period of nine years was extended by letter dated 6.11.1987 for a further period of ten years with the signature of Jashomatinandan Das and Gopalkrishna Das Goswami in their capacity as Trustees of IB Model Farm Public Trust. The said agreement has expired on 7.12.1998.

(f) Suits were filed by both the parties herein against each other and relief of permanent injunction was claimed against each other.

(g) IB Model Farm Public Trust has claimed injunction against Iskcon on the basis of the agreement being in the nature of 'agreement for management' and, therefore, Iskcon cannot restrain them from entering into the suit property and taking management of the suit property in their hands.

(h) Iskcon has claimed relief of permanent injunction against IB Model Farm Public Trust on the basis of the agreement claiming that they are in exclusive possession and, therefore, their possession cannot be interfered with even on afflux of time, without due procedure of law.

10. Keeping in forefront the aforesaid unassailable factual aspects, now let us examine the contentions advanced by learned advocates for both the parties.

11. Relying upon the judgment of the Honourable Apex Court in the case of Southern Roadways Limited v. S.M. Krishnan, AIR 1990 SC 673, learned Senior Counsel Mr. Shelat contended that since the agreement is for

management of the property, manager or the agent appointed by the owner of the property to develop the land for the purpose of achieving a laudable object of the Trust, has no right to remain in possession of the property after termination of his agency.

12. In the said judgment, the Honourable Supreme Court has held that after termination of the agency, an agent has no right to remain in possession and, therefore, the company is entitled to injunction restraining the agent from interfering in the possession. It has been further observed in the said judgment that possession of the agent of the said premise was on behalf of the company and not on his own right and, therefore, it was unnecessary for the company to file suit for recovery of possession since the agent has no right to remain in possession after termination of his agency and he has also no right to interfere with the company's business and, therefore, temporary injunction could be granted.

13. Learned Senior Counsel Mr. Shelat has further contended that in the instant case also Iskcon is appointed as a manager to manage the affairs of the IB Model Farm Public Trust for achieving the laudable object and purpose of IB Model Farm Public Trust i.e., to research and reform in agriculture, farming, etc.

14. Learned Senior Counsel Mr. Vakil has straneously assailed the aforesaid contention and the judgment upon which reliance is placed by learned Senior Counsel Mr. Shelat since, according to him, the said judgment is not applicable to the facts of the present case. According to him, agreement mark 3/1 is not simpliciter an agreement for management of the land. He further contended that the word "manager" is a misnomer and by giving the name "manager", an agreement cannot be interpreted and for appreciating the nature and character of the agreement, all the clauses therein are required to be interpreted and then only the nature of agreement can be determined and decided. So far as the instant agreement is concerned, it is nothing but a licence granted in favour of Iskcon. By virtue of the said agreement, Iskcon was permitted to put up construction thereon, to develop gaushala, to pay all taxes, to employ persons of its own to administer the management of the land and exclusive possession was entrusted to Iskcon. So far as the judgment of the Honourable Supreme Court upon which reliance is placed by learned Senior Counsel Mr. Shelat in Southern Roadways (supra) is concerned, in that case, the possession of the premises as per the

agreement was on behalf of the company for the purposes of carrying on agency business of the company and not on his own right while in the instant case since exclusive possession was entrusted to Iskcon, it is nothing but licence granted in favour of Iskcon.

14(A). On having examined the judgment relied upon by learned Senior Counsel Mr. Shelat in *Southern Roadways* (supra) and on having perusal of the clauses contained in the said agreement, prima facie, I am of the opinion that by the said agreement Iskcon was appointed as a manager to manage the land of IB Model Farm Public Trust but prima facie it cannot be interpreted as an agreement for management of the suit property simpliciter since exclusive possession was entrusted to Iskcon. Therefore, the judgment in *Southern Roadways* (supra) is not applicable to the facts of the present case.

15. Relying upon the judgment of the Honourable Apex Court in the case of *Shri Ram Prasad v. I.T. Commissioner*, AIR 1973 SC 637, learned Senior Counsel Mr. Shelat has contended that if the degree of control under the agreement is minimal, the relationship between the parties is that of principal and agent and in the instant case also there is no provision under the agreement which prevents the owner from entering into the suit land and, therefore, by efflux of time the agent is not entitled to retain possession.

16. Learned senior counsel Mr. Vakil contended that the said judgment is also not applicable to the facts of the present case because the agreement itself is not an agreement simpliciter for management of the property and he reiterated that merely by giving label of management it cannot be called an agreement for management.

17. Needless to say that in the said case before the Honourable Apex Court, the assessee was appointed as Managing Director of a Company and the question was whether the assessee was a servant or an agent. In the said case the Honourable Supreme Court has held that it is not possible to lay down any precise rule of law to distinguish one kind of employment from the other. The nature of the particular business and the nature of the duties of the employee will require to be considered in each case in order to arrive at a conclusion as to whether the person employed is a servant or an agent. I have already held in earlier paragraphs of this judgment that the agreement in question, prima facie, is not an agreement for management of the property because not only that exclusive possession was entrusted to Iskcon but it

was allowed to construct building, gaushala and to employ its own people at its own costs and expenses for the management of the property.

18. Learned Senior Counsel Mr. Shelat then placed reliance on the judgment of the Honourable Apex Court in the case of *State of Gujarat v. Biharilal*, (1999) 3 SCC 294 and contended that once the agreement has come to an end, all the rights mentioned therein will automatically come to an end. According to me, this judgment is also not applicable to the facts of the present case since I have prima facie come to the conclusion that the agreement is not an agreement simpliciter for management of the property as exclusive possession was entrusted to Iskcon.

19. The law of injunction has been well settled by catena of decisions of the Honourable Apex Court. So far as injunction qua possession is concerned, the Court granting injunction has to consider the prima facie possession of the party seeking injunction and once the court comes to the conclusion that the party seeking the injunction has established prima facie possession then the Court has to invariably grant injunction.

20. In this connection, reliance can also be placed on the latest two pronouncements of the Honourable Apex Court. In the case of *A.K. Patel v. U.J. Patel* 1999 (1) G.L.H. 1052, the Honourable Apex Court has very aptly elucidated that the plaintiff was in permissive possession and it was accepted by the owner and there is sufficient material on record to show prima facie case of the plaintiff and hence the trial court was right in granting temporary injunction in favour of the plaintiff. In that case the Honourable Apex Court has also observed that a reading of the judgment of the trial Court showed that though the agreement of sale executed in favour of the plaintiff was, according to the said Court, invalid because of its being in breach of the Tenancy Act still, in view of the compromise decree and the subsequent admission of the defendants 1 to 14 and report of the Court Commissioner, the trial Court held that plaintiff was in permissive possession as this was accepted by the owners. The sum and substance of the aforesaid elucidation is that at the time of granting injunction qua possession, the party seeking injunction must prima facie establish that he is in possession.

21. In the case of *Prataprai N. Kothari v. John Braganza*, (1999) 4 SCC 403, the Honourable Supreme Court has held that it is the principle of law that person who

has been in long continuous possession of an immovable property can protect the same by seeking an injunction against any person in the world other than the true owner. It is also further held that it is well settled that even the owner of the property can get back his possession only by resorting to the due process of law.

22. The ratio laid down by the Honourable Supreme Court in the above two pronouncements is required to be followed while granting injunction qua possession.

23. Relying upon the aforesaid two judgments, it cannot be disputed that by virtue of the agreement entered into between the parties Iskcon was inducted in possession of the land initially for a period of nine years and thereafter it was extended for a further period of ten years. The said fact is also not denied by IB Model Farm Public Trust. Their case is that by efflux of time Iskcon is not entitled to retain possession and IB Model Farm Public Trust being the owner of the property, is entitled to injunction. It is a settled proposition of law that if a party is inducted in possession of a property, by efflux of time, the party who has entrusted the possession cannot get back the possession without due process of law unless it is willingly surrendered by the party who has been inducted in possession.

24. So far as the case on hand is concerned, Iskcon has also disputed about the IB Model Farm Public Trust being in possession because, according to Iskcon, by virtue of the agreement, they are in possession of the land since 19 years and it has been established by them conclusively and hence I am of the prima facie opinion that the learned lower appellate Judge has committed no error in granting injunction in favour of Iskcon.

25. At the cost of repetition, it may be appreciated that without going into the validity of the agreement executed between the parties by leading evidence, it is very difficult to arrive at any conclusion as to the nature of the agreement. However, prima facie conclusion can be recorded. On the basis of the facts and circumstances emerging from the record, prima facie, the said agreement is not an agreement simpliciter for management of the property as contended by learned Senior counsel Mr. Shelat. Therefore, I am of the opinion that learned lower appellate Judge has very rightly held that all the questions are required to be adjudicated after the evidence is led and the nature and character of agreement cannot be determined without leading evidence and since by virtue of the said agreement possession is

retained with Iskcon they are entitled to injunction.

26. Learned Senior Counsel Mr. Shelat has then contended that the learned lower appellate Judge has committed jurisdictional error in determining the documents and once it is established that the jurisdictional error is committed, this court can definitely look into and examine the question by exercising powers under Section 115 of the Code. In this connection, he has placed reliance on the judgment of this Court in the case of Rajnikant v. Rameshchandra, 1982 (1) GLR 71. There cannot be any two opinion about the principle enunciated in the judgment of this Court wherein this Court has held that if the order of the appellate court suffers from illegal assumption of jurisdiction not vested in it or refusal to exercise jurisdiction vested in it and in those cases the order can be assailed in the High Court under Section 115 of the Code.

27. With due respect to the learned Senior Counsel, I am of the opinion that the judgment relied upon by him is of no avail or assistance to the case of IB Model Farm Public Trust since I have observed in earlier paragraphs of this judgment that prima facie the agreement is not an agreement simpliciter for management of the property.

28. So far as the scope of the High Court's jurisdiction under Section 115 of the Code is concerned, the Honourable Apex Court and this Court has unequivocally held that to invoke the jurisdiction the party who seeks the relief has to pass hurdle as envisaged in clauses (a), (b) and (c) of Section 115 of the Code. Once that hurdle is removed then second hurdle is proviso (b) to Section 115 of the Code which envisages that High Court shall not, under this section, vary or reverse any order made or any order deciding an issue, in the course of a suit or other proceedings except where -

(a) xxxxxx xxxxxx xxxxxx

(b) the order, if allowed to stand, would occasion failure of justice or cause irreparable injury to the party against whom it was made.

29. A plain reading of the aforesaid proviso in terms clarifies that if the order granted by the trial court if allowed to stand would either cause failure of justice or cause irreparable injury to the party against whom it was made, it can be interfered with. So far as the instant case is concerned, the injunction is operated against IB

Model Farm Public Trust. Admittedly, they are not in possession since last 19 years and since Iskcon is managing the property by virtue of the agreement, if the possession is retained by Iskcon, I fail to understand what irreparable injury would cause to IB Model Farm Public Trust as the possession has already been parted by them since last 19 years.

30. As mentioned hereinabove, the case law on this point is legion and it is not necessary to recapitulate all of them merely to cover the ideal parade to familiar knowledge. But, some of the important decisions are as under:

(1) In the case of Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd., reported in (1999) 1 SCC 37, the Honourable Supreme Court has held that High Court shall not to interfere unless failure of justice or irreparable injury is apprehended.

(2) In the case of M/s. K.K. Arora v. M/s. Meghraj, reported in 1987 (1) GLR 427, this Court has in paragraph 5 held as under:

"Moreover, after the amendment of sec. 115 of the C.P.C. in 1976, there is a further restriction on the power of the High Court in entertaining revision applications on merely legalistic grounds. The power of the High Court is circumscribed by a further condition that there has to be a failure of justice or irreparable injury in addition to the jurisdictional and other basic errors contemplated under clauses (a), (b) and (c) of sec. 115 of the C.P. Code. Even after the condition of an error under clause (a), (b) and (c) is satisfied, a further condition required by the proviso is to be satisfied that such an error has occasioned failure of justice or irreparable injury to the petitioner."

(3) In the case of Hindustan Aeronautics v. Ajit Prasad, AIR 1973 SC 76, the Honourable Supreme Court has held that the High Court should not interfere even if the order is right or wrong or in accordance with law or not, unless it has exercised its jurisdiction illegally or with material irregularity.

31. The aforesaid three judgments unequivocally lay down the principles relating to the exercise of powers by

the Court under Section 115 of the Code. The ratio laid down in the above judgments is that only if jurisdictional error is committed then in that case only the High Court can interfere. As per the decision of the Hon'ble Apex Court in the case of Hindustan Aeronautics (supra), even if the conclusion recorded by the learned trial Judge is right or wrong or in accordance with law or not, in that case also it is not open for the revisional Court to interfere unless the learned trial Judge assumes jurisdiction illegally or with material irregularity.

32. Again, at the risk of the repetition, I may say that the agreement entered into between the parties is prima facie not in an agreement for the management of the property but the permissive possession was entrusted to Iskcon for the last 19 years and, therefore, without due process of law their possession cannot be taken back or it is surrendered by the party who has been inducted in possession.

33. In view of the aforesaid factual and legal position, I am of the view that the learned lower appellate Judge has rightly held that the documents relied upon by the parties are to be examined, the nature and character of the documents is to be determined and it is not possible without the evidence being led. Since prima facie Iskcon is in possession, they are entitled to get the injunction against the true owner i.e., IB Model Farm Public Trust. According to me, the said finding is not perverse, capricious, unjust, unreasonable or illegal requiring interference at the hands of this Court in exercise of revisional powers. The learned trial Judge has reached just and correct conclusion which does not require any interference of this Court and on the contrary it requires confirmation of this Court by affirming the order recorded by the lower appellate court in both the civil appeals.

34. It is however made clear that the findings relating to the rights of the parties, nature and character of the agreement or as to the possession recorded by the trial Court and has accepted by me are of tentative nature and will be subject to findings that may be arrived at by the learned trial Judge in the suit after the evidence is led.

35. In the net result, both the Civil Revision Applications fail and accordingly they are rejected, however, with no order as to costs. Rule issued in both the Civil Revision Applications is discharged.

(skaran) &&&&&